

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7156

Petition of UPC Vermont Wind, LLC, for a Certificate of)
Public Good, pursuant to 30 V.S.A. § 248, authorizing the)
construction and operation of a 52 MW wind electric)
generation facility, consisting of 26 wind turbines, and)
associated transmission and interconnection facilities, in)
Sheffield and Sutton, Vermont)

Order entered: 2/21/2008

ORDER RE CONSTRUCTION OF MET TOWERS

Introduction

On August 8, 2007, the Public Service Board ("Board") issued an Order and Certificate of Public Good ("CPG") approving UPC Vermont Wind, LLC's ("UPC") petition to construct a wind generation facility in Sheffield, Vermont, but requiring that certain conditions be met prior to commencing site construction. The approved project included one permanent and two temporary meteorological ("MET") towers at the project site. On December 21, 2007, UPC filed a request to install these towers with information purporting to satisfy those CPG conditions that must be met prior to commencement of construction. That information includes a decommissioning plan and language in its leases with landowners.

Comments on the December 21 filing were filed by the Department of Public Service ("Department") and Ridge Protectors, Inc. ("RPI").

On January 28, 2008, UPC filed a letter requesting that the Board withhold approval of the December 21 filing until it had sufficient time to address the Department's concerns with the proposed decommissioning plan. On February 8, 2008, UPC filed a revised decommissioning plan and requested that the Board approve the December 21 filing.

In this Order, the Board approves construction of the MET towers, but does not approve, at this time, the decommissioning plan submitted by UPC or the language of the leases with landowners. The Board will provide parties until February 29, 2008, to file comments on the

revised decommissioning plan. In addition, we will require UPC to file leases that accurately reflect the requirements contained in the Board's August 8, 2007, Order.

Positions of Parties

UPC's December 21 filing included plans for the MET towers, a transportation plan depicting the route that UPC would use to bring the necessary equipment to the site, a copy of the leases that UPC has entered into with the landowners hosting the project, and a decommissioning plan.

On January 14, 2008, the Department filed a letter recommending that the Board deny UPC's request to begin construction because the decommissioning plan

is insufficient in that it fails to account for inflation in decommissioning costs over the life of the project, does not fully account for decommissioning the substation and interconnection facilities that will be used to interconnect the project with VELCO's 115 kV transmission line, and does not include a proposed reporting mechanism related to the Board-established trigger for decommissioning review.

On January 15, 2008, and January 22, 2008, RPI filed letters¹ contending that the decommissioning plan does not include sufficient money to decommission the project, does not provide for adequate remediation of the disturbed sites, and does not provide for unexpected contingencies. Further, RPI contends that several conditions contained in the August 8 CPG have not been met. RPI recommends that the Board deny UPC's request to begin construction of the MET towers.

On February 5, 2008, UPC filed a response to RPI's comments.

On February 8, 2008, UPC filed a revised decommissioning plan that it represents as addressing the Department's concerns.

On February 13, 2008, RPI filed comments in response to UPC's February 5 and 8 filings. RPI asserts that UPC's decommissioning plan appears to be insufficiently funded and "very

1. On January 14, 2008, RPI requested an extension of time to file comments on UPC's December 21 filing and then filed its comments the next day. It then filed additional comments on January 22, 2008. The Board has considered RPI's comments in ruling on UPC's request.

limited in scope." RPI reiterates its position that no project construction should be allowed until all CPG conditions have been met.

Discussion

The conditions included in the August 8 CPG require certain actions by UPC prior to the commencement of project construction. These conditions include a requirement that UPC file a decommissioning plan for approval with the Board and a requirement that the leases UPC has entered into with landowners hosting the project contain terms that provide reasonable assurance that the conditions of the CPG are complied with.

UPC has filed a revised decommissioning plan that it contends meets the Board's requirements. As parties have not yet had an opportunity to comment on the revised plan, we do not rule on the revised plan at this time. Instead, we provide parties until February 29, 2008, to file comments on the revised decommissioning plan.

With respect to the landowner leases, condition 30 of the CPG requires that "the terms of the lease agreements with the owners of the land upon which the Project will be built contain reasonable assurance of compliance with conditions contained in the CPG." However, the leases only require the landowner to "grant access to the Property for purposes of decommissioning the Project." The language in the leases is limited to decommissioning and does not explicitly allow the Department, the Agency of Natural Resources, or the Board to enter the project area to ensure compliance with other conditions, unrelated to decommissioning, included in the CPG.

Despite these deficiencies, the Board has determined that construction of the MET towers should be allowed to proceed at this time. The Board has previously allowed the construction of MET towers at other projects without requiring the establishment of a decommissioning fund or specific language in the leases between developers and landowners.² No party contends that the MET towers will have a significant impact. Instead, parties recommend that construction of the towers not proceed because the decommissioning plan, a prerequisite for any construction at the site, is inadequate. In addition, RPI contends that UPC has not met several of the conditions contained in the August 8 CPG. UPC has provided sufficient plans for review of the MET

2. See, e.g., Dockets 6884 and 7037.

towers, including transportation of the tower components to the site. Several of the conditions contained in the August 8 CPG are specifically directed to reduce impacts from wind turbines (e.g., bat curtailment criteria, noise monitoring plan), impacts that would not be present with only MET towers at the site. Given the relatively minor impact of the MET towers, we approve construction of the towers. However, if UPC does proceed with construction of the MET towers, it does so at its own financial risk, given that construction of the remainder of the project has not received authorization.

The February 8 decommissioning plan proposes to deposit \$20,000 in the decommissioning fund to cover the cost of decommissioning the MET towers. This dollar amount provides adequate assurance for removal of the MET towers. Accordingly, while we do not at this time approve the decommissioning plan proposed by UPC, we require UPC to post \$20,000 in a letter of credit, as described in its February 9 filing, for decommissioning the MET towers.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. Construction of the meteorological towers, as proposed in UPC Vermont Wind, LLC's December 21, 2007, filing is approved.
2. UPC must deposit \$20,000 in a decommissioning fund to cover the cost of decommissioning the meteorological towers, as proposed in its February 8, 2008, decommissioning plan.

Dated at Montpelier, Vermont, this 21st day of February, 2008.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: February 21, 2008

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.